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Sentence

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

13 CR 811 (ALC)

5 DAVID SANTIAGO,

6 Defendant.

7 -----x

8 New York, N.Y.

9 March 31, 2015

3:00 p.m.

10 Before:

11 HON. ANDREW L. CARTER,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
Southern District of New York

17 JASON MASIMORE

Assistant United States Attorney

18 FREEMAN, NOOTER & GINSBERG

Attorneys for Defendant

19 LEE A. GINSBERG

20 ALSO PRESENT: Allyson Feliz, U.S. Probation

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1 THE DEPUTY CLERK: Criminal cause for a sentencing in  
2 case number 13 CR 811. United States v. David Santiago.  
3 Counsel, please state your appearance. For the government?

4 MR. MASIMORE: Good afternoon, your Honor. Jason  
5 Masimore for the government, and with me here at counsel table  
6 is Probation Officer Allyson Felix.

7 THE DEPUTY CLERK: For the defendant?

8 MR. GINSBERG: Good afternoon, your Honor. Lee  
9 Ginsberg appearing for David Santiago.

10 THE COURT: Good afternoon, Mr. Santiago. We're here  
11 today to impose sentence in the case of United States v. David  
12 Santiago. In preparation for the proceeding, I've reviewed the  
13 presentence report, two letter submissions, one with many  
14 attachments from defense counsel, and a submission from the  
15 government.

16 Is there anything else that I should have?

17 MR. MASIMORE: Not from the government. Thank you.

18 MR. GINSBERG: No, I don't believe so, your Honor.

19 THE COURT: Again, I accept Mr. Santiago's guilty  
20 plea.

21 Let me just find out, Mr. Santiago, have you reviewed  
22 the presentence report and had a chance to discuss it with your  
23 attorney?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Counsel for the defense, are there any

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1 objections to the presentence report?

2 MR. GINSBERG: Your Honor, I raised one issue about a  
3 misdemeanor that was 10 years old, but I think frankly in  
4 reviewing how I posed it, I would rather raise it more on the  
5 3553, because technically it is appropriately counted for  
6 purposes of the criminal history.

7 THE COURT: Counsel for the government, any objections  
8 to the presentence report?

9 MR. MASIMORE: No, I also have no objections. Thank  
10 you.

11 THE COURT: Although I'm no longer required to follow  
12 the sentencing guidelines, I'm still required to consider the  
13 guidelines in imposing sentence, and to do so it is necessary  
14 that we accurately calculate the guideline sentence range.  
15 I've done my own independent evaluation of the guidelines, and  
16 there appears to be no objection to the guideline range as set  
17 forth in the presentence report.

18 Let me just confirm that. Any objection to the  
19 guideline range set forth in the presentence report by the  
20 government or the defense?

21 MR. MASIMORE: No, your Honor.

22 MR. GINSBERG: No, your Honor.

23 THE COURT: Based on my own independent evaluation and  
24 based on the lack of any objection, I adopt the guideline range  
25 as set forth in the presentence report which is 120 months for

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1 Count One, and 120 to 150 months for Count Two.

2 Counsel for the defense, are you ready for sentencing?

3 MR. GINSBERG: Yes, your Honor.

4 THE COURT: Mr. Santiago, are you ready for  
5 sentencing?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Counsel for the government, are you ready  
8 for sentencing?

9 MR. MASIMORE: We are.

10 THE COURT: So the record is clear, I adopt the  
11 guideline range that's set forth in the presentence report.  
12 And let me hear from the parties regarding any issues they want  
13 to raise regarding sentence, starting with counsel for the  
14 defense.

15 MR. GINSBERG: Thank you, your Honor. You prefer that  
16 I remain seated or can I stand?

17 THE COURT: That's fine. You can remain seated if  
18 you'd like.

19 MR. GINSBERG: Your Honor, first I think there is some  
20 more general issues before I get to the specific issues related  
21 to Mr. Santiago. I believe there was an issue that was raised  
22 at the sentence yesterday that also related to Mr. Santiago,  
23 and that is the government in its submission indicated that one  
24 of the defendants in this case at some point post-arrest had  
25 provided statements which implicated my client and others in

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1 this case in crimes that are not charged in this case, nor have  
2 they been convicted of. They forthrightly indicated that  
3 subsequently, that that person in open court recanted, and I  
4 think they also indicated that if he decided to testify about  
5 that, waived his Fifth Amendment privilege, he would likely  
6 continue with the recantation.

7 So, it exists in terms of the fact that he made that  
8 statement, but since he recanted it, and the government on its  
9 own believes he would continue with that, it seems to me that  
10 there is little basis for that to be included in a  
11 consideration, which I guess would be under aggravating factors  
12 under 3553.

13 I'm not asking for a Fatico hearing, but given the way  
14 the circumstances happened, it may be fair to say that if that  
15 person was used alone, for the moment, it wouldn't meet the  
16 preponderance standard at sentencing, because he made a  
17 statement and then he recanted the statement.

18 In any event, my understanding is that when this was  
19 raised yesterday, that your Honor indicated that you believed  
20 that you had a right to consider it, but you were not  
21 considering it as a factor in your sentencing. If that's the  
22 case, I don't have anything further to say about it.  
23 Otherwise, we can discuss that.

24 I don't want to go on and on about it if your Honor  
25 has made a determination, because it is essentially the same

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1 issue. It is just a different defendant.

2 THE COURT: Okay. Let me hear from the government.

3 MR. MASIMORE: Thank you, your Honor. Yes, that is  
4 the same issue from yesterday. I think the Court would be  
5 entitled to determine on its own whether the statements made to  
6 the law enforcement officers, which I understand there is not a  
7 dispute that such statements in sum and substance were made to  
8 law enforcement officers, whether that's more credible than the  
9 in-court recanting that the Court was present for. And I am  
10 not sure if Mr. Ginsberg was present for. It is not really  
11 relevant.

12 But basically everybody in the case was present for  
13 this when Mr. Maccow stood up, we were down in courtroom 110,  
14 at various times and even faced members of the community to  
15 assure them he hadn't said what he had been reported -- at that  
16 point hadn't even been reported as saying. It hadn't been part  
17 of discovery. Nobody actually in the case had known about it  
18 except for what Mr. Maccow had said.

19 Your Honor, I think there are, like with the case  
20 yesterday, yesterday I'd argued that the statements to the  
21 officers were corroborated by items found in Mr. Vallejo's  
22 apartment. I think that same corroboration holds true today.  
23 In addition, it is an example of the co-defendant making  
24 statements about this particular defendant that are consistent  
25 with the prior conviction for a violent home invasion

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1 robberies. So I think there is corroboration there.

2 It is offered by the government in support of sort of  
3 a counter argument. It is a counter argument to the defense  
4 argument that the criminal history overstates sort of the  
5 history and characteristics of this defendant.

6 I think under the case law, the Court is entitled to  
7 review this evidence and to consider it. I think it is not  
8 necessary to have a factual hearing to do so, because I don't  
9 think there are any facts in dispute in terms of what was said  
10 when. And the co-defendant, we would stipulate, is likely, if  
11 he were to take the stand, to continue denying these things in  
12 front of this defendant and in front of the community.

13 THE COURT: Let me just ask get some clarification  
14 from the government. I'm looking at the government's  
15 submission on page three and I'm not sure if these are  
16 typographical errors. I want to make sure I'm clear on what it  
17 is that you're claiming that Mr. Maccow indicated.

18 Looking at page three, toward the middle of that first  
19 paragraph, for example, Maccow confessed he had personally  
20 participated in a home invasion robbery in upper Manhattan in  
21 2011. Prior to the home invasion, Maccow stated he and others  
22 carried out a carjacking of the victim during which they stole  
23 the victim's keys. Maccow then carried out a home invasion  
24 robbery of the defendant's residence with co-defendants Martin,  
25 Vallejo, etc.

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1 MR. MASIMORE: That should be the victim's residence.  
2 That is incorrect.

3 THE COURT: In which they used the defendant's keys.  
4 I assume that should be the victim's keys as well?

5 MR. MASIMORE: Correct. There was a carjacking.  
6 During the carjacking they stole the victim's keys, and later a  
7 crew went to the apartment of the victim, used the victim's  
8 keys to enter that apartment. That's different than the home  
9 invasion robbery that was detailed in the memorandum with  
10 respect to Mr. Vallejo.

11 THE COURT: It does seem to me that I certainly have  
12 the authority to consider that, especially in light of the  
13 defense request that I consider that the criminal history  
14 category that he's in substantially overstates the seriousness  
15 of his criminal history category or is just a factor that I  
16 should consider in terms of the 3553 factors. It certainly  
17 seems it is appropriate in response to that for me to consider  
18 that.

19 However, I do have some reservations again about  
20 giving this any weight in which basically it seems that the  
21 government has taken the position that Mr. Maccow lied when  
22 Mr. Maccow was in court, and my recollection is he said  
23 something to the effect that he made statements but he was  
24 drunk at the time he made them and something to that effect.  
25 But, the government's position is that Mr. Maccow lied. And if



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1 he were to waive his Fifth Amendment privilege against  
2 self-incrimination, he would come here and lie.

3 With those sort of credibility concerns, I understand  
4 the government's position that perhaps it is a declaration  
5 against penal interest and the like for Mr. Maccow at the time  
6 of his arrest to say he was involved in additional robberies.  
7 Certainly it doesn't seem it would be against his penal  
8 interest to implicate others in there.

9 With those sort of vagaries regarding his credibility  
10 in general, I'm not going to give that any weight in terms of  
11 imposing sentence here. But I have considered it. But in  
12 light of the credibility issues that I think are rampant with  
13 Mr. Maccow, based on what the government has said, I'm not  
14 going to give that any weight.

15 Go ahead. Is there anything else you wanted to add?

16 MR. GINSBERG: Not on that issue, your Honor. There  
17 is a second issue that arises from a statement that was made in  
18 the probation report, and I addressed it in my written  
19 submission. In the PSR, it was indicated by the probation  
20 department on page 20, paragraph 108, essentially that the  
21 Court could consider in determining a sentence outside of the  
22 guideline range, in this case the suggestion is a higher  
23 sentence, could consider the fact that the defendant, and I  
24 think all of the defendants in this case, were permitted to  
25 plead guilty to essentially burglary offenses, not a narcotics

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1 offense. For Mr. Santiago particularly, the probation points  
2 out that had he been required to plead guilty to the narcotics  
3 charge, he would likely have been a career criminal, which  
4 would have raised his guidelines. Which is correct, had that  
5 happened.

6 My response in writing to the probation department and  
7 to the Court is that you can say that, make that same argument  
8 in many, many cases. There are so many cases that depend on  
9 plea negotiations where the government makes a determination  
10 one way or the other whether to charge a crime, for example,  
11 something that's more analogous on drug cases, when it could be  
12 a (b)(1)(A) or a (b)(1)(B), there is a 10 or five year  
13 mandatory minimum and the government decides to charge  
14 (b)(1)(C), which means there is no longer a mandatory minimum  
15 and the possible sentence is zero to 20.

16 The Court could, I suppose, you could make that  
17 argument in every case or the probation department could say,  
18 well, that should be considered as a factor, because it was  
19 originally a five year minimum which the defendant would have  
20 had to face, and he is no longer facing that, but we think the  
21 Court should consider it. So I think that's one way to look at  
22 it.

23 The other way to I think look at this is that in the  
24 first instance, it is the government that presents the evidence  
25 to the grand jury, and the grand jury returns indictments based

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1 upon largely what the government puts before it, especially in  
2 the federal system, as it is rarely the case that there is a  
3 defense in the grand jury or the defendant testifies. So, in  
4 every indictment, it is structured based upon what the  
5 government wants to place before the grand jury.

6 So in this case, it was structured with the burglary  
7 charge and narcotics charges. It didn't necessarily have to  
8 be. It could have been structured as a burglary case, just  
9 like in the many cases where there are Hobbs Act robbery  
10 charges where individuals rob apartments of drug dealers, and  
11 they take drugs out, that could be charged as a Hobbs Act  
12 robbery without being charged as a drug crime. And then if  
13 they obtain drugs, that could be used to calculate the  
14 guideline, but it doesn't have to be, because there are other  
15 ways to calculate the guideline.

16 So, the point here is that to go back and say because  
17 the defendant essentially received the benefit of a plea to a  
18 charge that doesn't make him a career offender, that should be  
19 a consideration for the Court in determining whether there  
20 should be an upward departure. I suspect if that's true, if  
21 the Court believes that that's true, then that's the case in I  
22 don't know what percentage of cases before the Court, but many.  
23 Because they're driven by the ultimate plea which is initially  
24 something that is determined in large part by what was in the  
25 indictment.

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1           So, while technically it's correct, I would ask the  
2 Court not to give much credence to that in determining what the  
3 ultimate sentence should be.

4           At the end of the day, it is my view, and I'll get to  
5 it shortly, that this particular sentence for David Santiago  
6 rests more on what his actual criminal history record is,  
7 versus what he has done more in the recent past and family  
8 issues, to decide what is a sentence that is sufficient but not  
9 greater than necessary. So, I wanted to address that issue at  
10 the top rather than mix it in with all the other considerations  
11 about Mr. Santiago.

12           THE COURT: Hold on. Can you just give me some  
13 clarification. It seems that the arguments that you're making  
14 regarding this statement seem to be sort of pre-*Booker*  
15 arguments. These arguments in which you're using the term  
16 "upward departure" and talking about the sentencing guidelines  
17 and focusing on the career offender guidelines. It seems that  
18 post *Booker*, there are many things that I can consider that I  
19 would not have been able to consider pre-*Booker*. And under 18  
20 U.S.C. 3553 I'm required to consider all of those factors  
21 listed there, and they include the nature and circumstances of  
22 the offense. So it seems that I am perfectly justified in  
23 considering that information.

24           And you stated in your letter, you mention talking  
25 about the function of plea negotiations and I should not get

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1 involved in plea negotiations and I should not be involved in  
2 plea negotiations. But by these arguments that you've been  
3 making, it sounds as if you are asking me to get involved in  
4 the plea negotiations sort of ex post facto and figure out what  
5 these negotiations are.

6 I want to make sure Mr. Santiago is clear, as was  
7 indicated at the time that he pled guilty, is that at the time  
8 he entered a plea of guilty, there is no promise what his  
9 sentence will be. Nor is there a promise as to what his  
10 guideline range would be. You had statements in your letter  
11 saying the function of plea negotiations is to resolve the case  
12 in a manner in which both parties believe there is an equitable  
13 result. Again, I am not going to get involved in plea  
14 negotiations. But ultimately, sentencing is my function. And  
15 anything that the parties may have been thinking about, again,  
16 there are no guarantees. There are no promises there. And I  
17 don't want to get involved in those sort of plea negotiations.

18 So I looked when the probation department indicated on  
19 page 20 that these were factors that may warrant a sentence  
20 outside of the advisory guideline system. They didn't indicate  
21 that that was a particular upward departure versus a variance  
22 under the guidelines or whatever the case may be. But those  
23 are just things that I can consider. Those relate to the  
24 nature and circumstances of the offense and with his criminal  
25 history. Those also relate to the personal history and

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1 characteristics of the defendant that I can consider those  
2 things.

3 If your concern is that I am going to make some sort  
4 of adjustment to a particular guideline range based on this,  
5 while I suppose I could, again, I think those are arguments  
6 that you're making are sort of pre-*Booker* arguments.

7 But I wanted to make sure I'm clear on what your  
8 position is. If your position is that I should not  
9 automatically sentence him as if he is a career offender,  
10 because if the plea agreement was different he would be a  
11 career offender. I get that. I'm not going to do that based  
12 on that. But I do have to consider everything, and those are  
13 some factors that I can consider.

14 MR. GINSBERG: I understand. And your Honor I think  
15 assesses my argument correctly. I'm not saying you can't,  
16 because, frankly, under 3553, and the more litigation there is  
17 about it, almost anything can be considered as long as there is  
18 some kind of a legitimate basis for it. So I agree, your Honor  
19 could consider it.

20 And the final thing I would point out is that in  
21 allowing the plea to be to the charges that were in the plea  
22 agreement, and not making it a drug plea, the government  
23 still -- and we agreed to it in the plea agreement -- utilized  
24 the narcotics guidelines for purposes of the base offense  
25 level. So while my client wasn't made a career criminal

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1 offender by pleading to the drug charge, the use of the  
2 narcotics base offense level versus potentially converting the  
3 value of the prescription drugs that were taken or any money  
4 that was taken into loss factors and then going into the fraud  
5 guideline which would have been lower, which is something I at  
6 least did discuss with the government, could be considered the  
7 other way.

8           So, what I'm really saying is this is not the only way  
9 that allowing the defendant to plead to a burglary as opposed  
10 to a crime that would have made him a career offender should be  
11 viewed, because there are so many other factors that also could  
12 have happened. And your Honor could consider it, frankly. If  
13 your Honor wanted to consider the fact that the guidelines are  
14 driven largely in this case based upon drugs, as opposed to the  
15 value of the actual loss, and that value would have had a much  
16 lower guideline, your Honor is entitled to consider that as  
17 well. So it is just the counter balance to what was put forth  
18 by the probation department.

19           THE COURT: Let me hear from the government on this  
20 point real quick.

21           MR. MASIMORE: Your Honor, I don't think that defense  
22 counsel is disputing that, as a legal matter, the Court can  
23 consider what alternate criminal history and guidelines could  
24 have been calculated had the plea been structured differently.  
25 So I don't think there is anything there on the record. I

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1 think the government's main point is regardless of what the  
2 Court considers specifically, it is faced with sentencing a  
3 defendant with a very significant violent criminal history who,  
4 notwithstanding that violent criminal history and previous  
5 interactions with the law, the justice system, and being on  
6 parole or probation, still continued in the course of conduct  
7 that we're sitting here today to impose sentencing on. I think  
8 that's the overarching principle. I don't think there is any  
9 dispute.

10 I would urge your Honor, to the extent paragraph 108  
11 of the presentence investigation report is actually a pretty  
12 good rebuttal to the defendant's argument for considering his  
13 criminal history category as understated, perhaps it could be  
14 useful there.

15 THE COURT: Go ahead. You may continue.

16 MR. GINSBERG: Thank you. One more general point I  
17 guess that may have been raised before, is the effort on behalf  
18 of defense counsel to have in the plea agreement a reduction  
19 for a global plea, which is not usually done in the Southern  
20 District, but is more commonly done -- I should say is done on  
21 a not-infrequent basis in the Eastern District. And during  
22 plea negotiations, the government said, and again accurately  
23 reported in their response that they believed it was a  
24 permissible argument for counsel to make but they didn't  
25 necessarily agree that the Court should give any consideration



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1 for the fact that most of the defendants pled guilty at about  
2 the same time after meetings with the government, group  
3 meetings with the government by defense counsel to try to get  
4 the best plea offer and to try to make it a little better for  
5 the defendants, because a number of them were coming in  
6 together.

7 The government's argument is that one reason the Court  
8 shouldn't consider that, whether we call it a reduction by a  
9 point or a 3553 factor, is because essentially I think they're  
10 saying it is just as likely that the defendants were not  
11 pleading guilty for a long time because a number of them were  
12 trying to prevent others from cooperating, and that's what held  
13 the group together, as opposed to a group of defendants saying  
14 we think that if we hold out together for a better plea, and we  
15 all go to the government at the same time, we may get some  
16 additional consideration.

17 So on that basis, I ask your Honor to consider that,  
18 as you said before, as you can consider many other kinds of  
19 factors under 3553. The fact is most of the defendants did  
20 plead guilty at or about the at the same time. Of course one  
21 of the reasons that drove that, I'm not missing the point that  
22 a trial date was looming, and often defendants wait to see  
23 what's going to happen as close to the trial date as they can  
24 without sort of forfeiting what they believe is their last best  
25 offer. But it is just something that I would ask the Court to

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1 also consider, particularly because I know even though I'm not  
2 asking for credit for myself, we put a lot of effort in on  
3 behalf of my client and by other lawyers asking us to speak to  
4 the government to try to get an agreement on that, which we  
5 weren't able to do. But those are the more generic points.

6 I think the balance of my argument and I think what  
7 the heart of this sentence is about has to do with my client's  
8 unenviable prior criminal history record, versus to some large  
9 degree behavior of his over the last year and a half or so  
10 while he's been in pretrial custody at the MCC. And the reason  
11 I think that that's significant is that most defendants who are  
12 being held at the MCC and the MDC for lengthy periods of time  
13 pretrial and then plead, in my experience at least, do very  
14 little or take very few opportunities to improve themselves.  
15 There aren't lots of courses. It is not like a sentencing  
16 institution where there are much more opportunities. To some  
17 degree they are limited, although I learned through  
18 Mr. Santiago there were more opportunities than I was aware of.  
19 And he has thrown himself into that completely.

20 Some of the courses that he took and some of the  
21 certificates are not the most significant things in the world.  
22 Learning about something in zoology or some historical thing  
23 doesn't mean his life is going to change. I think what it  
24 means in the whole context of what he did while he was in jail  
25 is that he was spending time trying to learn things or be

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1 occupied with something of value, rather than sitting in the  
2 jail, talking to other inmates, or causing trouble, or doing  
3 nothing and just letting time pass by.

4 But more than the programs that he completed, and  
5 there are a lot of them that are sort of general in nature, may  
6 not have lasted very long, I think there are a few that are  
7 quite significant. And that is the fact that he obtained his  
8 GED. Which is, again, in my experience, done by some  
9 defendants, but not that often. Many of them don't need to  
10 because they have degrees, but there's plenty of them who could  
11 use a GED but just don't make the effort. Some of them are  
12 just not capable of doing the work, but they don't even make  
13 the effort to try to go to classes and learn and see if they  
14 can. Mr. Santiago did that. And that's not just an hour or  
15 two hours here and there to try to impress a judge at the time  
16 of sentence. That's I believe an effort taken with everything  
17 else to begin to do something to change one's life.

18 And take it along with the anger management program  
19 which I think is also something significant, because I think  
20 most defendants, incarcerated, whether I guess in federal jail  
21 or in state jail, often have anger problems and issues or  
22 related issues. And without dealing with those anger issues,  
23 when they are released, there is a good chance they're going to  
24 continue to have those anger issues which could easily lead to  
25 future criminal conduct. But he did take the opportunity to

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1 take that program.

2 In addition, he involved himself in this -- the  
3 acronym is GOGI program, which involves essentially a  
4 self-awareness program which teaches the inmates about decision  
5 making, about being able to publicly connect with other people  
6 in an appropriate and proper way, about writing things that  
7 they may have to use as skills in their future, and about  
8 speaking in front of other people in public about things that  
9 they've written.

10 That is, frankly, the first client I've had who has  
11 participated in that program. My client asked me to send the  
12 Court a letter invitation to a program that was put on a few  
13 weeks ago, which I did. And before I did that, I contacted  
14 Adam Johnson at the MCC, the head of the legal department,  
15 because, first of all, I wanted to make sure I understood what  
16 the program was. And secondly, I certainly didn't want to send  
17 a letter to a federal judge inviting him to attend something  
18 like this if it was an inappropriate thing to do based upon the  
19 bureau of prisons policies, and he said no, it isn't. It is  
20 permissible. He even indicated he was aware that one or more  
21 of the judges had been contacted. I don't know if anybody  
22 attended.

23 But, those programs are not programs that are directed  
24 at just taking Mr. Santiago out of his unit for an hour to  
25 learn about zebras running around in the wild. Those programs

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1 are directed towards an individual who has not done so well in  
2 his life, who has had problems, childhood issues, but more  
3 importantly, criminal conduct problems, and repeated them. And  
4 knows that he needs to do something to move away from that.

5 And we never know at the time of sentence, and I don't  
6 get to make the determinations of sentences. Judges do. But  
7 none of us when we're in court at the time of sentence know  
8 whether the efforts that the defendant has put in during a  
9 certain period of time are an indication that he is beginning  
10 to change his mindset, he is beginning to take the path of  
11 rehabilitation, and wants to become that different person.  
12 Whether he can, he can achieve it, we also can't know.

13 But given the opportunity, David Santiago took the  
14 path of opportunity to take all of these programs. Which, to  
15 begin with, is unlike most defendants. And also, in many  
16 cases, there is no -- in most cases there is no way to predict.  
17 And especially, that's especially true with defendants who are  
18 in custody and take no programs and do nothing in jail to  
19 indicate to a Court that they're beginning to change their  
20 lives. Defendants who are out on bail have that opportunity,  
21 they could get a job or continue their job or do things in the  
22 community and come back at the time of sentence and say, Judge,  
23 this is what I did, I'm trying to change.

24 Mr. Santiago had the opportunity in jail to do what  
25 was offered to him, and he took the opportunity. In almost

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1 everything that was available, he did and he took.

2 Now, the cynical view of that would be he did it  
3 simply to try to please the sentencing judge and hope that the  
4 sentencing judge sees that he did all these things, and gives  
5 him a sentence lower than the guidelines because of that. But  
6 he didn't really intend to help himself with that.

7 The more positive view, and the one I would ask your  
8 Honor to look at and accept, is that for a long period of time  
9 in jail, he took course after course after course, some that  
10 are very significant towards changing his life. And there  
11 comes a time with anybody who has been involved in crime, or  
12 most of them, where they finally get it. Maybe somebody at 22,  
13 maybe somebody at 30, maybe somebody later on. And the hope  
14 here is, and I think we can take something from all the  
15 programs that Mr. Santiago has participated in, that he's doing  
16 that. Is that going to be sufficient when he's released from  
17 jail to prevent him from being involved in future criminal  
18 conduct? I can't say that and none of us can say that. But it  
19 is an indicator. And it is something we don't have very often  
20 to be able to use.

21 And I understand the Court has to look at the specific  
22 and general deterrence and seriousness of the crime. The crime  
23 was a series of burglaries where prescription narcotics were  
24 stolen, generally, and then sold and turned into money. So, it  
25 was a crime really of obtaining financial benefit at the end of

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1 the day in whatever form it would come in, whether from the  
2 prescription drugs or if there was money at the pharmacy.

3 Deterrence, specific deterrence, there is no question  
4 that my client, based on his prior behavior, and being in this  
5 case, needs to have specific deterrence. The question is how  
6 much specific deterrence. And general deterrence I think is an  
7 even harder thing to predict, because there we're talking about  
8 what message a particular sentence for a particular individual  
9 in a particular kind of case essentially sends a message that  
10 if you out there in the public get involved in this kind of  
11 criminal conduct, this is the kind of sentence you're going to  
12 face.

13 And ultimately, in this particular case, with these  
14 particular factors, our view is that a sentence even at the  
15 bottom of the guidelines, understanding the prior criminal  
16 history, is more than sufficient. That my client doesn't need  
17 to be sentenced to 10 years in jail to have specific deterrence  
18 on him to not commit future crimes. I don't know that for a  
19 fact. But, we have to make some determinations about what's in  
20 front of us.

21 I think significantly what's in front of us at the  
22 moment is the criminal history, but the whole history since he  
23 was incarcerated on this case. I think for that reason, it  
24 balances against the aggravating factors of the criminal  
25 history and the nature of the crime.

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1           We suggested in our submission to the Court that a  
2 sentence of 70 months would be sufficient. The Court may not  
3 agree and may feel that's not enough of a specific deterrent.  
4 It is still a significant sentence. A 70-month sentence is not  
5 one year, two years, three years. It is still plenty of time  
6 in jail.

7           Now, my client has put himself in a position different  
8 than I think almost every other defendant in this case because  
9 of his criminal history. If not for the criminal history  
10 category, he probably would be at 70 to 87 or somewhere in that  
11 range. But his criminal history drives him up to category V,  
12 and it bumps him up to a higher category. I think there is  
13 some place, maybe not the 70 that I suggested, but there is  
14 some place less than 120 that would be sufficient but not  
15 greater than necessary. And it would put his sentence more in  
16 line with the other sentences that have been imposed and I  
17 suspect may be imposed in this case, knowing as I do what the  
18 roles of the other defendants were.

19           His role was maybe in the middle. He's not a leader,  
20 he is not a supervisor, and I'm not claiming he was a minimal  
21 or minor participant.

22           I would ask your Honor to consider all of those  
23 factors, the more global ones and the more specific ones that  
24 relate to David Santiago, and sentence him outside and below  
25 the guideline as was found by the Court.



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1 Thank you, your Honor.

2 THE COURT: As I've indicated, I've seen the defense  
3 submission with many letters attached and certificates. I note  
4 there are some people in the audience. I don't know if these  
5 people are here for Mr. Santiago.

6 MR. GINSBERG: They're all here.

7 THE COURT: If you could give me a sense of who these  
8 people are.

9 MR. GINSBERG: They're family members and friends.  
10 There is his son, his mother, his child's mother, aunts, uncle,  
11 sister, nephew, nieces. And they've been actively involved in  
12 contacting me throughout the case as well.

13 THE COURT: Thank you. I have a few questions for  
14 defense counsel based on what you've said. As you've  
15 indicated, I have to consider all the factors in 18 U.S.C.  
16 3553, and one of the factors that jumps out at me in this case  
17 is the need for specific deterrence. While I certainly commend  
18 Mr. Santiago for the courses that he's been taking in terms of  
19 making productive use of his time while he's been in prison,  
20 he's done that before. In 2009, paragraph 78 of the  
21 presentence report, "While incarcerated at Great Meadow  
22 Correctional Facility, he was enrolled in the ASAT drug  
23 treatment program and was able to remain sober for several  
24 weeks even after he was incarcerated." Paragraph 81 of the  
25 presentence report says, again, "In 2009, while incarcerated at

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1 Great Meadow Correctional Facility, Santiago successfully  
2 completed courses in floor maintenance and tile installation."

3 So, unfortunately, my concern is not, as odd as this  
4 sounds, how he does while he's in jail. He seems to take  
5 advantage of the opportunities afforded to him in jail. The  
6 real problem is what he does when he's out. It seems, I know  
7 you've made this argument that his criminal history category  
8 substantially overrepresents the seriousness of his criminal  
9 history and you speak specifically to a 2004 conviction. But  
10 it seems that since 2003 he hasn't been able to go a year and a  
11 half without getting arrested, because that 2006 conviction,  
12 his most recent conviction before this, was for conduct that  
13 took place in 2003 prior to the 2004 arrest for sale of  
14 marijuana. Which kind of belies this whole notion that that  
15 old conviction sort of overstates the seriousness of his  
16 criminal record. The fact that he was released on parole in  
17 2010 after doing these admirable things while he was in prison  
18 and less than a year and a half after that gets involved in  
19 this string of burglaries causes me great concern.

20 He's on parole at the time or he's on supervision at  
21 the time that these burglaries are being committed. I haven't  
22 seen anything indicating -- I don't know if there is a parole  
23 hold at this point.

24 MR. GINSBERG: I can tell you there is not. I've been  
25 in touch with the parole officer who recently changed. There

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1 isn't. I don't know if they're going to lodge one or not. But  
2 certainly, I couldn't argue to the Court that there wouldn't be  
3 a basis for it.

4 THE COURT: If there is no parole hold, which makes me  
5 believe that while he was committing these burglaries, he was  
6 regularly checking in with his parole officer. Sort of giving  
7 his parole officer, or his supervising officer, the impression  
8 that he's trying hard and leading a law-abiding life while  
9 going out at night and committing these burglaries.

10 I have a real concern about specific deterrence. I  
11 know you're asking for 70 months. He just finished doing 60  
12 months. Or at least his sentence was for five years. And  
13 again, within a year and a half, he gets involved in this.

14 I take very seriously the letters of support that I've  
15 received from his family and from his friends. But my concern  
16 is it seems many of these letters could have been written back  
17 in 2006. Obviously some of the children weren't born yet, but  
18 these same letters could have been written then. Many of these  
19 same statements could have made in 2006 and in 2004. And I'm  
20 concerned about the need to make sure he actually gets it.

21 I have no doubt that there is some intent while he's  
22 in custody and there is some belief that he can get it  
23 together. The problem is once he gets released, he tends to  
24 succumb to these temptations, and I'm really concerned about  
25 that.

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1           Again, looking at the specifics of his life, and what  
2       he's done on his cases and what he did while he was in prison  
3       before, I have no doubt from everything that I've seen that he  
4       is someone who is capable of getting his life together. And he  
5       has a lot of community support, and I hope that he can do that.  
6       But, as you've indicated, while we don't truly ever know  
7       whether someone really gets the message, we certainly have  
8       indicators in this case that he hasn't gotten the message yet.  
9       And I'm really concerned about that.

10           Can you address that a little bit more, counsel?

11           MR. GINSBERG: I can, your Honor. I appreciate the  
12       question. You're right, we can't predict. And I thought long  
13       and hard before I suggested to the Court 70 months. Which,  
14       frankly, in my view, was the lowest I could I think reasonably  
15       even suggest to the Court. And as I said before, there may be  
16       a number in between that number and his guidelines that's  
17       appropriate. But, part of the ability to change comes with  
18       getting older, seeing your children start to grow up without  
19       you, and realizing what that really means.

20           And also, unfortunately, many people, like  
21       Mr. Santiago, make efforts and fall back and make efforts and  
22       fall back. One of his problems was drug use. And that fed to  
23       some degree into his inability to escape. I'm not saying he  
24       never would have done any of these other crimes, but he's had  
25       these negative factors, as your Honor points out, that have

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1 pulled him back to where he shouldn't have been.

2 But specific deterrence, which I said very candidly to  
3 the Court before, has to be given in this case. And  
4 significant. The question really is does it need to be six  
5 years? Does it need to be seven years? Does it need to be  
6 eight years? Can he finally learn that lesson and when he gets  
7 out of jail continue the path he's trying now in jail, with the  
8 support he has, and with his knowledge, hopefully this time  
9 that however much time he's sentenced to, when he gets out, if  
10 he ever gets involved in anything again, basically, it's all  
11 over for him. His life is done, because the sentence would be  
12 something that he doesn't even want to think about. And in  
13 federal court, we're more aware of that than in state court.  
14 Whether this is the time, whether because he's older now is the  
15 reason, I'm not sure. But I know, I spent a lot of time with  
16 him at the jail. I tend to spend -- my wife says -- too much  
17 time at the jail with my clients. That's who I am and that's  
18 why I do what I do. He's talked a lot to me about his family.  
19 And he had another lawyer at the beginning of the case, and he  
20 changed lawyers because he didn't feel that that lawyer was  
21 really paying attention to him and what he wanted to do and not  
22 coming to see him. And he needed to speak to somebody about  
23 some of these things.

24 I can't be the predictor of the future, but I think  
25 that he can be specifically deterred, and the Court can feel

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1 that a sufficient punishment has been given to him and sentence  
2 him to something that is less than the advisory guideline.  
3 Because the numbers between 70 and 120 are all big numbers, and  
4 whether one year more or two years more is going to change the  
5 way he thinks, I don't want to say it won't, but there comes a  
6 point either you get it or you don't get it. I'm not sure if  
7 six years makes you get it or it doesn't and then seven years  
8 does. He's getting it. And that amount of time in jail, a  
9 six-year sentence, a seven-year sentence, takes him away from  
10 his family for another serious period of time. Takes him away  
11 from his children, when one of them will be out of his teens  
12 and a young adult. And those things are significant to  
13 anybody, even people who have committed multiple crimes.

14 So, I think that's the best answer I can give you  
15 without trying to create something that I have no basis to say  
16 to the Court, or I have no basis to know. I can only tell you  
17 from my experience with Mr. Santiago, and frankly my experience  
18 with a number of his family members, and their interest in  
19 what's going to happen to him, and what we can do for him.

20 THE COURT: Okay. So let me just ask you this then,  
21 the follow up on that. I understand your position in terms of  
22 age. But my recollection in the presentence report is that he  
23 has a 14-year-old child and a seven-year-old child.

24 MR. GINSBERG: I think 15 and seven, yes.

25 THE COURT: At the time that he started getting

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1 involved in this rash of burglaries, the children were  
2 approximately 10 and two. It seems that that's the point where  
3 the realization should have struck. It seems that's the point,  
4 and certainly, it happens with people who end up involved in  
5 the wrong side of the criminal justice system that many  
6 individuals over time, they start to mature. They get a little  
7 older and they either stop committing crimes or they at least  
8 start committing less serious crimes.

9 I'm also concerned about the fact that the seriousness  
10 of his offenses has increased over the years. It hasn't gone  
11 down. It is not a situation in which he was 19 and wild out  
12 there running around and doing some very violent things and  
13 then got involved in forging checks and the like or something  
14 like that. It seems that the significance of the crimes that  
15 he's been involved in has been increasing over the years  
16 instead of decreasing, and that's a very troubling trend.

17 Can you address that?

18 MR. GINSBERG: Well, in the instant case, which I  
19 think gives your Honor pause, I think it can be viewed in a  
20 number of ways. I'm not saying it is a crime that could not  
21 have engendered violence and wasn't harmful to the owners of  
22 the pharmacy, the victims. I think for him, for David  
23 Santiago, it was driven by an opportunity to obtain money which  
24 would have been the ultimate proceeds of the stealing of the  
25 prescription drugs and something else. And while it's not a

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1 nice crime, it's driven by this need for money and his own  
2 drugs, and I'm not sure if it puts it into a totally different  
3 category.

4 We know that there are crimes that on the face of it  
5 absolutely are violent crimes given the nature of the crimes.  
6 Shooting, serious assaults, things of that nature. For him,  
7 this was not what it was all about. It was the opportunity to  
8 get money for drugs and to live, because he wasn't working  
9 regularly. So while it is a serious crime, I'm not sure it  
10 incrementally increased the kind of behavior he was involved  
11 in. I think it was a pattern of doing things that he wanted to  
12 do for his benefit to get money to deal with his issues.  
13 Fortunately, this wasn't a crime where somebody was hurt or  
14 somebody was shot or something like that happened.

15 And again, I am not saying that these kind of crimes  
16 can't lead to that. Certainly it could have. Somebody could  
17 have been a night watchman or working late. I understand it.  
18 But I don't think it is jumped up to another category where  
19 he's becoming more dangerous. I think his mental state about  
20 the kind of things that he's doing has sort of stayed the same.  
21 Not that it makes it good, but --

22 THE COURT: Again, that's what I'm concerned about.

23 MR. GINSBERG: Yes.

24 THE COURT: It seems his substance abuse started when  
25 he was 18. Every single one of his convictions was for



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1 something to get money. Right? Every single one of them. The  
2 burglary in the third degree, back in 1999. He didn't get any  
3 criminal history points for that. The criminal sale of  
4 marijuana in the fourth degree in 2004, that's for money. The  
5 robbery in the third degree in April of 2004, that's for money.  
6 The criminal possession of marijuana in the third degree, that  
7 seems to be for money. Maybe it's all personal use and he  
8 smokes a whole lot of weed. That seems to me that's about  
9 money as well. And the robbery in the first degree in 2006 was  
10 about money. And this rash of burglaries was about money. And  
11 that's, again, what I'm concerned about, is it seems that he  
12 hasn't learned his lesson after all of these times and that's  
13 what I'm really concerned about. He hasn't demonstrated he's  
14 learned his lesson.

15 MR. GINSBERG: I understand that, your Honor. While  
16 the pattern or the nature of the crimes is significant, I think  
17 the question or the statement your Honor just posed is the  
18 ultimate one. That is, you could look at that and say he  
19 hasn't learned, he's been in jail before, he's gotten out, he's  
20 been on supervision, and he committed additional crimes. True.  
21 And that means he deserves to be put in jail for this crime for  
22 a significant period of time. But I think ultimately the  
23 question is what that means. What is a significant amount of  
24 time enough to punish him, to specifically deter him, and does  
25 it need to be what the guidelines says or can it be something

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1 less.

2 At the end of the day, we all recognize that, to some  
3 degree, the guideline numbers are always arbitrary, they were  
4 created on a good faith basis by a sentencing commission, but  
5 the numbers could have been 10 months higher this way or one  
6 year lower this way. So, that's not a magic number. Nor is  
7 what I'm asking for. But what I am saying is, even with your  
8 Honor's concern, even with the crimes that he's committed, and  
9 the pattern, given his serious demonstration more recently and  
10 the fact that he's somewhat older, the sentence doesn't have to  
11 be as harsh as a guideline sentence in this case would dictate.  
12 There is another sentence or sentences that would be sufficient  
13 and appropriate.

14 So in a sense, I'm not disagreeing with anything your  
15 Honor is saying. I concede it has to be a significant  
16 sentence. But I think the number that's in the guidelines  
17 based upon the calculations is more than is necessary for this  
18 case.

19 So, again, that's I think the best answer I can give  
20 without looking into the future and knowing what David Santiago  
21 is going to be doing six, seven, eight years from now which  
22 none of us can. My hope is he's going to be taking other  
23 courses outside of jail, and taking care of his family, and  
24 getting out of this position that he's put himself in over  
25 quite some period of time.

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1           THE COURT: Thank you. Let me hear from the  
2 government.

3           MR. MASIMORE: Your Honor, I think we're arriving at  
4 the question of, well, what is so special about the guidelines  
5 range 120 to 150. I think putting even aside the guidelines  
6 calculation, I think the Court could look at his previous  
7 sentence here. He's 25 years old, he's sentenced to 60 months  
8 in prison. Five years. Now, a few years later he's 31, a  
9 Court would be well justified to double the sentence and say to  
10 somebody, look, every time you come back into court, every time  
11 you commit more crimes after serving a sentence, we are just  
12 going to double the sentence until we arrive at the sentence  
13 that's long enough to actually persuade you not to commit any  
14 more crimes. So, from that perspective, 120 months is  
15 completely reasonable because it is simply a doubling of the  
16 previous sentence that was imposed that was not sufficient to  
17 dissuade him from committing crimes.

18           I think though, also, if the Court looks at some of  
19 the other sentences that have been rendered in this case, just  
20 yesterday Mr. Vallejo received a 70 month sentence. His level  
21 of participation was very similar to Mr. Santiago, but he was  
22 criminal history category I. He hadn't the demonstrated  
23 recidivism that we're faced with here, and he received 70  
24 months. So a sentence even at the low end of the guidelines  
25 range here would only be 50 months more than that.

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1           We have another defendant, Esfrain Silva, who was  
2 sentenced by Judge Griesa. He received a sentence of 84 months  
3 in prison. He wasn't involved for as long as a time frame.  
4 His main issue was that once he was arrested in this case, he  
5 then actually committed more burglaries. In that sense it is  
6 very similar in terms of he was a demonstrated recidivist. His  
7 criminal history category was less than Mr. Santiago's. He  
8 received 84 months. A 120 month sentence in this case would  
9 only be 26 months more than that. It would certainly be  
10 justified by the difference in criminal history. It would also  
11 be justified by the difference in the character of the previous  
12 crimes. The previous violence that this defendant has  
13 committed.

14           So I think your Honor is focusing on what seems to be  
15 in this case probably the most significant factor in  
16 determining a sentence. I think based on some of the facts I  
17 I've talked about here, I think that's why a sentence within  
18 the guidelines range actually does sort of get us to where  
19 would be sufficient but not greater than necessary to account  
20 for that factor, and other factors in the case.

21           THE COURT: Mr. Santiago, I'll give you an opportunity  
22 to address me. You don't have to say anything, but if you'd  
23 like, now is your opportunity.

24           THE DEFENDANT: Should I stand?

25           THE COURT: You can stay seated if you'd like.

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1           THE DEFENDANT: I actually wrote something down, but I  
2 don't want to go by. I'm just going to speak what I feel.

3           As I was growing up, I had a lot of issues in my life.  
4 And he may say I'm a violent individual, but the person that I  
5 was 10, 11 years ago is not the person that I am today. When I  
6 was committing the violent acts, I was misguided. I wasn't  
7 really -- I wasn't really well in mind what I was doing. I  
8 thought everything was right. Not knowing that what I was  
9 doing was wrong. I was younger, immature, and as I wrote to  
10 you in my letter, I told you that actually coming to prison  
11 made me the man that I wasn't. And I say to say that because I  
12 didn't have no guidance. I didn't have no kind of guidance. I  
13 didn't have a father figure. And the case that I actually did  
14 the time for, the five years for, was actually a case that I  
15 committed earlier in time, when I was younger and immature and  
16 dumb.

17           As I went to prison, I learned a lot. Yes, you say  
18 that your main issue is you don't want me to continue doing  
19 crimes. I can't say for certain right now what will happen in  
20 the future because nobody will know that. Nobody can dictate  
21 the future. All I can say is that I'm not, I'm not perfect.  
22 And nobody in this world is perfect. And I've made valuable  
23 mistakes that have caused a lot of pain and suffering to my  
24 family. Not only to me, but to my family, and I feel ashamed  
25 and embarrassed for doing these kind of acts.

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1 I'm not telling you to let me go. I'm not telling you  
2 to give me 10 years. I'm not telling you to give me in  
3 between. I'm telling you just to try something and see what  
4 will come out of it. I want you to look at me five years, six  
5 years from now and say I helped this man in a way, and I'm  
6 proud for it because he's successful. I don't want you to see  
7 me seven, eight years from now and be like he did this and he  
8 came back here.

9 And you have all the right to do what is necessary at  
10 the moment. But, the violent person that I once was, I can't  
11 say I am today. Because I've been incarcerated in MCC for 17  
12 months, and to be honest with you, I haven't gotten into one  
13 violent incident. So I don't see where's the violence. And  
14 everyone knows who have been around the prison system long  
15 enough, knows that trouble is always lurking in prison.  
16 Whether it is for the littlest stuff or for the bigger stuff.  
17 And I have managed 17 months without altercations, whether it  
18 was with staff or other inmates. I have kept myself busy,  
19 teaching others, how to persuade, pursue a better life. You  
20 know that this life ain't working.

21 I used to hear about the Feds as I growing up. I used  
22 to hear about it all time. It is the worse place to be. I'm  
23 here. I don't want anybody else to live it. No. But I'm not  
24 a violent person that I used to be. I was a violent person at  
25 one point in my life. I'm not going to take that away from me.

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1 But the person that I am today is a totally different David  
2 than I was 10, 12 years ago.

3 I had no guidance. No guidance whatsoever. When I  
4 talk to Lee, I explained to him, I tell him all the time, I  
5 look at him as a father figure because I didn't have a father  
6 to tell me from right or wrong. I struggle with that with my  
7 son all the time. That there will be issues in life, I  
8 can't -- we will never know that until the time comes. The  
9 future is always uncertain. And we all know that.

10 I made valuable mistakes here. And you know, I see  
11 that you should punish me, yeah, for my wrongdoing. I want to  
12 correct my wrong ways. I want to get enrolled in programs,  
13 drug treatment. I want to do the right thing, but I want to do  
14 it for me. I don't want to do it because I'm coming in front  
15 of you or anybody else. I want to do it to better myself. I  
16 don't want to make my family to go through the grief.

17 It is not easy. It is hard where I come from. I'm  
18 surrounded by poverty. There is nothing else I can do. I tried  
19 the easy way out. As I can see, it definitely wasn't working.  
20 I just want a better life. I'm not telling you to let me go or  
21 anything like that. Just be considerate.

22 Thank you, your Honor.

23 THE COURT: Thank you. I'll be back. Let me think  
24 about this for a moment.

25 (Recess)

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1 THE COURT: Mr. Santiago, are you ready for  
2 sentencing?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Are you satisfied with your legal  
5 representation up to this point?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Defense counsel, is there any reason why  
8 sentence should not be imposed?

9 MR. GINSBERG: No, your Honor.

10 THE COURT: Counsel for the government, any reason why  
11 sentence should not be imposed?

12 MR. MASIMORE: No, your Honor.

13 THE COURT: Let me hear from the government regarding  
14 restitution in this case.

15 MR. MASIMORE: Your Honor, we'd ask for the 90-day  
16 statutory period to submit restitution. With respect to  
17 forfeiture, there was an agreed-upon forfeiture order, a  
18 consent order that would become final if the Court pronounces  
19 it.

20 THE COURT: Defense counsel, any objection to that?

21 MR. GINSBERG: No, your Honor.

22 MR. MASIMORE: It was principally a \$500,000 money  
23 judgment and forfeiting the right to the automobiles that were  
24 listed.

25 THE COURT: Do you have a copy of that order?



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1 MR. MASIMORE: I do, your Honor.

2 THE COURT: I note that I have the authority to  
3 downwardly depart under the guidelines. I also have the  
4 authority to vary under the guidelines under the factors of 18  
5 U.S.C. 3553, and I have considered all of the factors in 18  
6 U.S.C. 3553.

7 Regarding forfeiture, I will announce that  
8 Mr. Santiago has agreed to forfeit as pertaining to counts one  
9 and two property, real or personal, which constitutes or is  
10 derived from proceeds traceable to such offense, including, but  
11 not limited, to \$500,000 in United States currency, a 2010  
12 Mercedes Benz ML 63 AMG bearing VIN 4JGBB7HBXAA561332, a 2010  
13 Mercedes Benz 63 AMG bearing VIN WDDNG7HB3AA310953. A 2005  
14 Dodge Magnum RT bearing VIN 2D8GV582X5H649022. And a 2005  
15 Honda Odyssey Touring bearing VIN 5FNRL38875B072204.

16 I will impose the special assessment for both counts  
17 in the total amount of \$200. I will not impose a fine.

18 In terms of supervised release, I will sentence  
19 Mr. Santiago to three years for counts one and two with each  
20 term of supervised release to run concurrently. That's for the  
21 supervised release term. I will impose the mandatory  
22 conditions of supervised release. I will impose the standard  
23 conditions of supervised release one through 13 with the  
24 following special conditions: That he participate in a program  
25 approved by the probation office, which program may include

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1 testing to determine whether Mr. Santiago has reverted to using  
2 drugs or alcohol. I authorize the release of available drug  
3 treatment evaluations and reports to the substance abuse  
4 treatment provider as approved by the probation officer.  
5 Mr. Santiago will be required to contribute to the costs of  
6 services rendered in an amount determined by the probation  
7 officer, based on ability to pay or availability of the  
8 third-party payment. Mr. Santiago shall submit his person,  
9 residence, place of business, vehicle, or any other premises  
10 under his control to a search on the basis that the probation  
11 officer has reasonable belief that contraband or evidence of a  
12 violation of the conditions of the release may be found. The  
13 search must be conducted at a reasonable time and in a  
14 reasonable manner. Failure to submit to a search may be  
15 grounds for revocation. Mr. Santiago shall inform any other  
16 residents that the premises may be subject to search pursuant  
17 to this condition.

18 Mr. Santiago is to report to the nearest probation  
19 office within 72 hours of release from custody. And  
20 Mr. Santiago should be supervised by the district of residence.  
21 I will not impose a curfew.

22 Regarding the term of custody. Mr. Santiago, you have  
23 a lot of community support here. You have a lot of support  
24 from your family and your friends, and I hope that you continue  
25 to lean on that support. You have a lot of potential and the

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1 ability to do a lot of positive things. I know you have been  
2 taking advantage of some of the programs that have been offered  
3 to you while you've been in custody.

4 But one thing that you're going to need to do  
5 eventually is really kind of change the way you view your  
6 opportunities and change the way that you view perhaps  
7 yourself.

8 You indicated when you spoke to me, and I took to  
9 heart everything that you said, and I do not believe -- let me  
10 make this clear -- I do not believe that you are a menace to  
11 society or anything like that. I am very cognizant of the need  
12 to give people second chances. But for you, this is more than  
13 a second chance. You've been given second chances over and  
14 over and over again. You indicated to me that you're  
15 surrounded by poverty and you felt like you had no choice. And  
16 I want to make sure that you understand that you do have  
17 choices. And yes, it is going to be difficult with a limited  
18 education and limited skill sets. Not to say that you don't  
19 have some education, because the GED is very important. And  
20 you do have some skills. You do have the skills in flooring  
21 and tile and I hope that you're able to maintain some other  
22 skills. There are opportunities for you to get gainful  
23 employment. I am not trying to sugar coat things. I know it  
24 will be difficult as a convicted felon to do that.

25 If your goal is to find some sort of opportunity where

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1 you can make thousands and thousands and thousands of dollars  
2 quickly, you are correct, there are not very many choices for  
3 that. And if that is still your goal, you're probably going to  
4 find yourself back in my courtroom or another courtroom.

5 And I know it is difficult if you're surrounded by  
6 poverty and if you grew up in poverty to see other people with  
7 all these great material things and think that you need to be  
8 subjected to continue to live a life of poverty or at least not  
9 have all the flashy things that other people have. But there  
10 is a lot of middle ground between living in abject poverty and  
11 living the lifestyles of the rich and famous. And I'm not  
12 saying that at some point maybe you might not get there. You  
13 might get there at some point. Perhaps this clothing line that  
14 you are working on, perhaps that will get you there at some  
15 point. But those things take time. There are no quick fixes.  
16 If you're still relying on quick fixes, you are going to end up  
17 again in my courtroom or somebody else's courtroom, and you are  
18 going to continue to cause pain and suffering to the people who  
19 have been here supporting you who have written all these  
20 wonderful letters of support, who are here today to support  
21 you. But most important, you are going to hurt yourself.

22 I do not enjoy sending people to jail. I do not enjoy  
23 sentencing people to long periods of time in jail. I know what  
24 jail can do to individuals, I know what jail can do to  
25 individuals' families. But I feel, given the recidivism that

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1 you've shown, that I need to impose a sentence that is serious  
2 and I hope that you get the message.

3 Again, the purpose of me sentencing you to the  
4 sentence that I am going to sentence you to is not because I  
5 think that you are a menace to society. That is not the reason  
6 that I'm doing this. I am not doing this to treat you as some  
7 statistic and simply throw you away. I am being very, very  
8 cognizant of you, your background, the things that I've seen  
9 about you in this presentence report, the things that I've seen  
10 about you from the letters that have been submitted by your  
11 family. And I know that it can be painful growing up without a  
12 father figure. And perhaps you're still looking for that at  
13 some level. You've indicated that Mr. Ginsberg has been like a  
14 father figure to you. But, at this point in your life, you've  
15 got to figure out a way to move beyond that, because instead of  
16 looking for a father figure, you have to make sure that you are  
17 a father -- beyond just a father figure, but a father to your  
18 children. You'll have to figure out some kind of way to -- I  
19 don't want to sound callous -- but you've got to let that go.  
20 You've got to figure out a way to heal from that and direct  
21 yourself, because you do have the ability to do some very  
22 positive things and you have a lot of community support. But  
23 you've got to find the drive within yourself to make sure that  
24 you make the right decisions.

25 So, for Count Two, I am going to sentence you to a

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1 term of custody of 128 months. And for Count One, I am going  
2 to sentence you to a term of custody of 120 months. And those  
3 terms should run concurrently with each other.

4 Are there any open counts?

5 MR. MASIMORE: The government moves to dismiss all  
6 open counts with respect to this defendant.

7 THE COURT: That is granted.

8 Mr. Santiago, that is the sentence of the Court.  
9 Again, I hope that you take what I've said to heart. I know  
10 that you're disappointed in the sentence that I have imposed  
11 here. I hope that you will continue to reach out to your  
12 family for support while you're in custody. And I sincerely  
13 hope that when you are released from custody, that you can stay  
14 on the straight and narrow.

15 I'd like to thank all the members of Mr. Santiago's  
16 family and friends for their letters and for showing their  
17 support here as well.

18 You have a statutory right to appeal. There are  
19 certain time constraints on your ability to appeal. You should  
20 talk to your lawyer about that.

21 Is there anything else from the government?

22 MR. MASIMORE: No, your Honor.

23 THE COURT: Anything else from the defense?

24 MR. GINSBERG: Yes, your Honor. I'd ask your Honor to  
25 recommend that Mr. Santiago be given the opportunity to

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1 participate in the alcohol and drug abuse program of the bureau  
2 of prisons. And I'd also ask that your Honor recommend that he  
3 be placed in either Fort Dix or another facility close to the  
4 New York City area.

5 THE COURT: Okay. I will do that. Anything else?

6 MR. GINSBERG: No, your Honor.

7 THE COURT: Thank you.

8 o0o